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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 212, 225, 237, 242, and 252

RIN 0750-AI01

Defense Federal Acquisition Regulation Supplement: Contractor Personnel Supporting U.S. Armed Forces Deployed Outside the United States (DFARS Case 2013-D015)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to align it with revisions to the DoD Instruction on operational contract support.

DATES: Effective [Insert date of publication in the FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, telephone 571-372-6106.

SUPPLEMENTARY INFORMATION:

I. Background

DoD published a proposed rule in the Federal Register at 78 FR 65244 on October 31, 2013, to revise and update the prescription and the clause at DFARS 252.225-7040, previously titled

"Contractor Personnel Authorized to Accompany U.S. Armed Forces Deployed Outside the United States," to align it with the changes in applicability, terminology, and other revisions made by Department of Defense Instruction (DoDI) 3020.41, entitled "Operational Contract Support (OCS)."

II. Discussion and Analysis

A. Public comment.

One respondent submitted a public comment in response to the proposed rule, which was considered in development of the final rule.

Comment: The respondent requested a change to the DFARS clause 252.225-7040 to include provisions clearly stating that contractors may withdraw from contingency operations without the threat of termination for default when security conditions dictate withdrawal as a prudent course of action. The respondent also recommended a consultation process with the local commander or contracting officer's representative to discuss security situations and appropriate remedies for contractors.

Response: In response to the public comment, DFARS 252.225-7040, paragraph (h)(2) is revised in the final rule to provide that with the appropriate approvals, even mission-essential personnel may be withdrawn due to security considerations.

B. Other changes.

Beyond the changes initially proposed, the clause at 252.225-7040 has been modified as a result of internal comments, as follows:

- Based on feedback from in-theater, paragraph (c)(1)(ii) no longer includes the statement that the Contracting Officer will specify in the contract the level of protection to be provided to Contractor personnel. This is not feasible due to constant fluctuation in the circumstances in theater. It is necessary to recognize the reality in theater that changing conditions cannot always be foreseen. The clause still retains the commitment in paragraph (c)(1) that the Combatant Commander will develop a security plan for protection of Contractor personnel in locations where there is not sufficient or legitimate civil authority and the Combatant Commander decides it is in the interest of the Government to provide security through military means. However, the level of protection that will be necessary or appropriate cannot be specified in the contract in advance. Moreover, taken in conjunction with the change regarding withdrawal of mission-essential personnel, the contractor personnel may be authorized to leave the area if the Combatant Commander is not in a position to provide adequate security.
- Paragraph (b)(1) emphasizes that the clause applies to both contractors authorized to accompany the Force (CAAF) and non-CAAF. The proposed rule included the proposed change of

applying the clause to non-CAAF as well as CAAF. This change in paragraph (b)(1) just adds "to both CAAF and non-CAAF" for emphasis. It is necessary to make this point clearly, because this was one of the most fundamental changes proposed, the basis for changing the title of the clause from "Contractor Personnel Authorized to Accompany U.S. Armed Forces..." to "Contractor Personnel Supporting U.S. Armed Forces..."

- Paragraph (b)(3) replaces the phrase "individual defense" with "individual self-defense." Likewise, at paragraph (j)(1), the phrase "personal protection" has been revised to "individual self-defense," for consistency with the wording of the DoDI 3020.41.

- Paragraph (c)(3) now requires that Contractor personnel who are issued a letter of authorization must carry it with them at all times while deployed. This change is a relatively minor requirement, consistent with the DoDI 3020.41. Paragraph (d)(1)(iii) of the clause already requires that the Contractor shall ensure that its personnel comply with all applicable United States regulations, directives, instructions, policies, and procedures.

- Paragraph (e) has been re-titled "Preliminary personnel requirements" rather than "Pre-deployment requirements," because

some of the requirements relate to non-CAAF, who do not deploy. This is just a semantic correction.

- Paragraph (e)(1)(iii) no longer contains the requirement for Contractor personnel to return all U.S.-Government issued identification at the end of their deployment. This requirement has been relocated to paragraph (h)(4), because the requirement is not a preliminary personnel requirement.
- Paragraph (j)(2) clarifies that if contractor personnel are authorized to carry weapons in accordance with paragraph (j)(1) of the clause, the contracting officer will notify the contractor what weapons and ammunition are authorized. This change removes some inconsistent statements and re-enforces the overarching policy currently stated in paragraph (j)(1), that it is the Combatant Commander who authorizes the carrying of weapons for individual self-defense, in accordance with DoDI 3020.41. The Combatant Commander determines whether to authorize in-theater Contractor personnel to carry weapons, and what weapons and ammunition will be allowed. It is not the contracting officer that authorizes the carrying of weapons, "subject to the approval of the Combatant Commander." Rather the contracting officer passes along to the contractor the authorization of the Combatant Commander.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

A final regulatory flexibility analysis has been prepared consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, and is summarized as follows.

This rule updates the clause and prescription for DFARS 252.225-7040, Contractor Personnel Supporting U.S. Armed Forces Deployed Outside the United States, to align the DFARS with the changes in applicability, terminology, and other revisions made by Department of Defense Instruction (DoDI) 3020.41, entitled "Operational Contract Support (OCS)."

DoDI 3020.41 was revised and reissued in December 2011. The DoDI "establishes policy, assigns responsibilities, and provides procedures for OCS, including OCS program management, contract support integration, and integration of defense contractor personnel into contingency operations outside the United States..." (DoDI 3020.41, section 1.a.).

There were no significant issues raised by the public comments in response to the initial regulatory flexibility analysis. The Chief Counsel for Advocacy of the Small Business Administration did not file any comments in response to the rule.

The final rule will impact small businesses with personnel who provide direct support to U.S. Armed Forces personnel deployed outside the United States. Given the concerted effort by the U.S. to procure products and services from local vendors (see, e.g., sections 841 and 842 of the National Defense Authorization Act for Fiscal Year 2013, entitled Extension and Expansion of Authority to Acquire Products and Services Produced in Countries Along a Major Route of Supply to Afghanistan), the impact on U.S. small businesses should be minimal. In its Paperwork Reduction Act estimate for SPOT, DoD estimated that up to 1,300 companies ultimately could be supporting U.S. armed forces deployed outside the United States. Approximately 20 percent of these companies are non-U.S. firms (and therefore are not categorized as either small or large), and approximately 20

percent of the U.S. companies are small businesses, i.e. approximately 200 small businesses.

This rule does not impose any new reporting, recordkeeping, or other compliance requirements. The requirement to use the SPOT database is not new to this case. It has been in place for several years and is applied to all sizes of businesses that have personnel deployed in a contingency operation. The SPOT database can be accessed with a laptop and is user friendly to encourage real-time updates of the information provided.

DoD did not identify any significant alternatives to the rule that would accomplish the stated objective of implementing DoDI 3020.41 and that would reduce the impact on small entities.

V. Paperwork Reduction Act

The rule contains information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C chapter 35; however, these changes to the DFARS do not impose additional information collection requirements to the paperwork burden previously approved under OMB Control Number 0704-0460, entitled "Synchronized Predeployment and Operational Tracker (SPOT) System," in accordance with the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Parts 212, 225, 237, 242, and 252

Government procurement.

Manuel Quinones,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 212, 225, 237, 242, and 252 are amended as follows:

1. The authority citation for 48 CFR parts 212, 225, 237, 242, and 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 212—ACQUISITION OF COMMERCIAL ITEMS

2. Amend section 212.301 by revising paragraph (f) (xlv) to read as follows:

212.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

(f) * * *

(xlv) Use the clause at 252.225-7040, Contractor Personnel Supporting U.S. Armed Forces Deployed Outside the United States, as prescribed in 225.7402-5(a).

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PART 225—FOREIGN ACQUISITION

3. Revise the heading of section 225.7402 to read as follows:

225.7402 Contractor personnel supporting U.S. Armed Forces deployed outside the United States.

* * * * *

4. Revise section 225.7402-2 to read as follows:

225.7402-2 Definition.

Designated operational area is defined in the clause at 252.225-7040. See PGI 225.7402-2 for additional information on designated operational areas.

5. Revise section 225.7402-5(a) to read as follows:

225.7402-5 Contract clauses.

(a) Use the clause at 252.225-7040, Contractor Personnel Supporting U.S. Armed Forces Deployed Outside the United States, instead of the clause at FAR 52.225-19, Contractor Personnel in a Designated Operational Area or Supporting a Diplomatic or Consular Mission Outside the United States, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, for performance in a designated operational area that authorize contractor personnel (including both contractors authorized to accompany the Force (CAAF) and non-CAAF) to support U.S. Armed Forces deployed outside the United States in—

- (1) Contingency operations;
- (2) Humanitarian assistance operations;
- (3) Peace operations consistent with Joint Publication 3-07.3; or
- (4) Other military operations or military exercises, when designated by the combatant commander or as directed by the

Secretary of Defense.

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PART 237—SERVICE CONTRACTING

237.171-4 [Amended]

6. Amend section 237.171-4(a) by removing "a Force" and adding "U.S. Armed Forces" in its place.

PART 242—CONTRACT ADMINISTRATION AND AUDIT SERVICES

242.302 [Amended]

7. Amend section 242.302(S-72) by removing the phrase "Authorized to Accompany" and adding "Supporting" in its place.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

8. Amend section 252.225-7040 by—

- a. Revising the section heading;
- b. Removing from the clause title the phrase "Authorized to Accompany" and adding in its place "Supporting";
- c. Removing the clause date "(FEB 2013)" and adding "(MAY 2014)" in its place;
- d. Adding to paragraph (a), in alphabetical order, the definitions "contractors authorized to accompany the Force", "designated reception site", and "non-CAAF";
- e. Revising paragraph (b);
- f. Removing paragraph (c)(1)(ii) and redesignating paragraph (c)(1)(iii) as paragraph (c)(1)(ii);
- g. Revising paragraph (c)(2)(i);

- h. Amending paragraph (c)(2)(iii) by removing the phrase "unless specified elsewhere in this contract";
- i. Removing paragraph (c)(3) and redesignating paragraph (c)(4) as (c)(3);
- j. Amending the newly redesignated paragraph (c)(3) by adding a new sentence at the end of the paragraph.
- k. Adding a new paragraph (c)(4);
- l. Amending paragraph (d)(1) introductory text by removing the phrase "authorized to accompany" and adding "supporting" in its place;
- m. Amending paragraph (d)(3) introductory text by removing "contractor employees accompanying U.S. Armed Forces" and adding "CAAF" in its place;
- n. Revising the heading of paragraph (e) and paragraph (e)(1);
- o. Amending paragraph (e)(2)(iv) by removing "Contractor personnel authorized to accompany U.S. Armed Forces in the field" and adding "CAAF" in its place;
- p. Adding paragraphs (e)(2)(v) and (vi);
- q. Amending paragraph (f) introductory text by removing the words "Deployed Contractor personnel" and adding "CAAF" in its place;
- r. Amending paragraph (f)(3) by—
 - i. Removing the phrase "Joint Reception Center (JRC)" and adding "designated reception site (DRS)" in its place; and

- ii. Removing the words "The JRC" and adding "The DRS" in its place;
- s. Revising paragraph (g);
- t. Revising paragraph (h);
- u. Amending paragraph (j)(1) by removing "carry weapons," and adding "carry weapons for individual self-defense," in its place, and removing ", paragraph 6.3.4.1 or, if the contract is for security services, paragraph 6.3.5.3";
- v. Revising paragraph (j)(2);
- w. Amending paragraph (j)(3)(ii), by removing "and";
- x. Amending paragraph (j)(3)(iii), by removing the "." and adding ";" in its place;
- y. Adding paragraphs (j)(3)(iv) and (v);
- z. Revising paragraph (o); and
- aa. Revising paragraph (q).

The revisions and additions read as follows:

252.225-7040 Contractor Personnel Supporting U.S. Armed Forces Deployed Outside the United States.

* * * * *

(a) * * *

Contractors authorized to accompany the Force, or CAAF, means contractor personnel, including all tiers of subcontractor personnel, who are authorized to accompany U.S. Armed Forces in applicable operations and have been afforded CAAF status through a

letter of authorization. CAAF generally include all U.S. citizen and third-country national employees not normally residing within the operational area whose area of performance is in the direct vicinity of U.S. Armed Forces and who routinely are collocated with the U.S. Armed Forces (especially in non-permissive environments). Personnel collocated with U.S. Armed Forces shall be afforded CAAF status through a letter of authorization. In some cases, Combatant Commander subordinate commanders may designate mission-essential host nation or local national contractor employees (e.g., interpreters) as CAAF. CAAF includes contractors previously identified as contractors deploying with the U.S. Armed Forces. CAAF status does not apply to contractor personnel in support of applicable operations within the boundaries and territories of the United States.

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Designated reception site means the designated place for the reception, staging, integration, and onward movement of contractors deploying during a contingency. The designated reception site includes assigned joint reception centers and other Service or private reception sites.

* * * * *

Non-CAAF means personnel who are not designated as CAAF, such as local national (LN) employees and non-LN employees who are permanent residents in the operational area or third-country

nationals not routinely residing with U.S. Armed Forces (and third-country national expatriates who are permanent residents in the operational area) who perform support functions away from the close proximity of, and do not reside with, U.S. Armed Forces.

Government-furnished support to non-CAAF is typically limited to force protection, emergency medical care, and basic human needs (e.g., bottled water, latrine facilities, security, and food when necessary) when performing their jobs in the direct vicinity of U.S. Armed Forces. Non-CAAF status does not apply to contractor personnel in support of applicable operations within the boundaries and territories of the United States.

* * * * *

(b) General.

(1) This clause applies to both CAAF and non-CAAF when performing in a designated operational area outside the United States to support U.S. Armed Forces deployed outside the United States in—

- (i) Contingency operations;
- (ii) Humanitarian assistance operations;
- (iii) Peace operations, consistent with Joint Publication 3-07.3; or
- (iv) Other military operations or military exercises, when designated by the Combatant Commander or as directed by the Secretary of Defense.

(2) Contract performance in support of U.S. Armed Forces deployed outside the United States may require work in dangerous or austere conditions. Except as otherwise provided in the contract, the Contractor accepts the risks associated with required contract performance in such operations.

(3) When authorized in accordance with paragraph (j) of this clause to carry arms for personal protection, Contractor personnel are only authorized to use force for individual self-defense.

(4) Unless immune from host nation jurisdiction by virtue of an international agreement or international law, inappropriate use of force by contractor personnel authorized to accompany the U.S. Armed Forces can subject such personnel to United States or host nation prosecution and civil liability (see paragraphs (d) and (j)(3) of this clause).

(5) Service performed by Contractor personnel subject to this clause is not active duty or service under 38 U.S.C. 106 note.

(c) * * *

(2)(i) Generally, CAAF will be afforded emergency medical and dental care if injured while supporting applicable operations. Additionally, non-CAAF employees who are injured while in the vicinity of U. S. Armed Forces will normally receive emergency medical and dental care. Emergency medical and dental care includes medical care situations in which life, limb, or eyesight is jeopardized. Examples of emergency medical

and dental care include examination and initial treatment of victims of sexual assault; refills of prescriptions for life-dependent drugs; repair of broken bones, lacerations, infections; and traumatic injuries to the dentition. Hospitalization will be limited to stabilization and short-term medical treatment with an emphasis on return to duty or placement in the patient movement system.

(3) * * * Contractor personnel who are issued a letter of authorization shall carry it with them at all times while deployed.

(4) Unless specified elsewhere in this contract, the Contractor is responsible for all other support required for its personnel engaged in the designated operational area under this contract.

* * * * *

(e) Preliminary personnel requirements.

(1) The Contractor shall ensure that the following requirements are met prior to deploying CAAF (specific requirements for each category will be specified in the statement of work or elsewhere in the contract):

(i) All required security and background checks are complete and acceptable.

(ii) All CAAF deploying in support of an applicable operation—

(A) Are medically, dentally, and psychologically fit for deployment and performance of their contracted duties;

(B) Meet the minimum medical screening requirements, including theater-specific medical qualifications as established by the geographic Combatant Commander (as posted to the Geographic Combatant Commander's website or other venue); and

(C) Have received all required immunizations as specified in the contract.

(1) During predeployment processing, the Government will provide, at no cost to the Contractor, any military-specific immunizations and/or medications not available to the general public.

(2) All other immunizations shall be obtained prior to arrival at the deployment center.

(3) All CAAF and selected non-CAAF, as specified in the statement of work, shall bring to the designated operational area a copy of the Public Health Service Form 791, "International Certificate of Vaccination" that shows vaccinations are current.

(iii) Deploying personnel have all necessary passports, visas, and other documents required to enter and exit a designated operational area and have a Geneva Conventions identification card, or other appropriate DoD identity credential, from the deployment center.

(iv) Special area, country, and theater clearance is obtained for all personnel deploying. Clearance requirements are in DoD Directive 4500.54, Official Temporary Duty Abroad, and DoD 4500.54-G, DoD Foreign Clearance Guide. For this purpose, CAAF are considered non-DoD contractor personnel traveling under DoD sponsorship.

(v) All deploying personnel have received personal security training. At a minimum, the training shall—

(A) Cover safety and security issues facing employees overseas;

(B) Identify safety and security contingency planning activities; and

(C) Identify ways to utilize safety and security personnel and other resources appropriately.

(vi) All personnel have received isolated personnel training, if specified in the contract, in accordance with DoD Instruction 1300.23, Isolated Personnel Training for DoD Civilian and Contractors.

(vii) Personnel have received law of war training as follows:

(A) Basic training is required for all CAAF deployed outside the United States. The basic training will be provided through—

(1) A military-run training center; or

(2) A web-based source, if specified in the contract or approved by the Contracting Officer.

(B) Advanced training, commensurate with their duties and responsibilities, may be required for some Contractor personnel as specified in the contract.

* * * * *

(e) * * *

(2) * * *

(v) Such employees are required to report offenses alleged to have been committed by or against Contractor personnel to appropriate investigative authorities.

(vi) Such employees will be provided victim and witness protection and assistance.

* * * * *

(g) Personnel data.

(1) The Contractor shall use the Synchronized Predeployment and Operational Tracker (SPOT) web-based system, to enter and maintain the data for all CAAF and, as designated by USD(AT&L) or the Combatant Commander, non-CAAF supporting U.S. Armed Forces deployed outside the United States as specified in paragraph (b)(1) of this clause.

(2) The Contractor shall enter the required information about their contractor personnel prior to deployment and shall continue to use the SPOT web-based system at

<https://spot.altess.army.mil/privacy.aspx> to maintain accurate, up-to-date information throughout the deployment for all Contractor personnel. Changes to status of individual Contractor personnel relating to their in-theater arrival date and their duty location, to include closing out the deployment with their proper status (e.g., mission complete, killed, wounded) shall be annotated within the SPOT database in accordance with the timelines established in the SPOT business rules.

(h) Contractor personnel.

(1) The Contracting Officer may direct the Contractor, at its own expense, to remove and replace any Contractor personnel who jeopardize or interfere with mission accomplishment or who fail to comply with or violate applicable requirements of this contract. Such action may be taken at the Government's discretion without prejudice to its rights under any other provision of this contract, including the Termination for Default clause.

(2) The Contractor shall identify all personnel who occupy a position designated as mission essential and ensure the continuity of essential Contractor services during designated operations, unless, after consultation with the Contracting Officer, Contracting Officer's representative, or local commander, the Contracting Officer directs withdrawal due to security conditions.

(3) The Contractor shall ensure that Contractor personnel follow the guidance at paragraph (e)(2)(v) of this clause and any specific Combatant Commander guidance on reporting offenses alleged to have been committed by or against Contractor personnel to appropriate investigative authorities.

(4) Contractor personnel shall return all U.S. Government-issued identification, to include the Common Access Card, to appropriate U.S. Government authorities at the end of their deployment (or, for non-CAAF, at the end of their employment under this contract).

* * * * *

(j) * * *

(2) If Contractor personnel are authorized to carry weapons in accordance with paragraph (j)(1) of this clause, the Contracting Officer will-notify the Contractor what weapons and ammunition are authorized.

(3) * * *

(iv) Comply with applicable Combatant Commander and local commander force-protection policies; and

(v) Understand that the inappropriate use of force could subject them to U.S. or host-nation prosecution and civil liability.

* * * * *

(o) Mortuary affairs. Contractor personnel who die while in

support of the U.S. Armed Forces shall be covered by the DoD mortuary affairs program as described in DoD Directive 1300.22, Mortuary Affairs Policy, and DoD Instruction 3020.41, Operational Contractor Support.

* * * * *

(q) Subcontracts. The Contractor shall incorporate the substance of this clause, including this paragraph (q), in all subcontracts when subcontractor personnel are supporting U.S. Armed Forces deployed outside the United States in—

- (1) Contingency operations;
- (2) Humanitarian assistance operations;
- (3) Peace operations consistent with Joint Publication 3-07.3; or
- (4) Other military operations or military exercises, when designated by the Combatant Commander or as directed by the Secretary of Defense.

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